

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of North Carolina.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).

4. At all relevant times, Defendant, a North Carolina Limited Liability Company headquartered in Raleigh, North Carolina, has continuously been doing business in the State of North Carolina, including in Wake County, North Carolina and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

ADMINISTRATIVE PROCEDURES

6. More than thirty days prior to the institution of this lawsuit, Christopher Kilby filed a charge with the Commission alleging violations of Title VII by Defendant.

7. On April 29, 2019, the Commission issued to Defendant a Letter of Determination finding reasonable cause to believe that Title VII was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

8. The Commission engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of

Determination.

9. The Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

10. On June 4, 2019, the Commission issued to Defendant a Notice of Failure of Conciliation.

11. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF CLAIMS

12. As described in greater detail below, since at least August 2017 to the present, Defendant has engaged in unlawful employment practices at its North Carolina and South Carolina locations in violation of Section 703(a)(1) of Title VII, 42 U.S.C. 2000(e)-(2)(a)(1). Specifically, Defendant subjected Christopher Kilby (“Kilby”) and other similarly situated male applicants to discrimination when Defendant refused to hire them for sales associate positions because of their sex, male.

13. On or about August 27, 2017, Defendant refused to hire Kilby for an open sales associate position at its Adam & Eve store located on Capital Boulevard in Raleigh, North Carolina (“Capital Boulevard store”) because of his sex, male, in violation of Section 703 of Title VII, 42 U.S.C. § 2000(e)-2(a).

14. In early August 2017, Kilby inquired about employment opportunities at Defendant’s Capital Boulevard store.

15. A female employee at the Capital Boulevard store told Kilby Defendant was hiring two sales associates and to submit his resume to the store manager to apply.

16. On or about August 27, 2017, Kilby returned to the Capital Boulevard store with his resume.

17. The store manager was not present when Kilby visited the store on or about August 27, 2017.

18. A female employee took Kilby's resume and told Kilby she would leave Kilby's resume on the store manager's desk.

19. On or about September 3, 2017, Kilby visited the Capital Boulevard store to check on the status of his employment application.

20. Kilby spoke with a female employee about his application.

21. The female employee stated Defendant does not hire men for sales floor (sales associate) positions. She stated Defendant hires men for receiving and unpacking ("stocking") floor positions only.

22. Defendant neither contacted Kilby regarding his application nor interviewed him for a job.

23. Defendant did not hire Kilby.

24. The minimum qualifications required for a sales associate position with Defendant included a high school diploma or equivalent qualification, retail experience, and a flexible schedule.

25. Kilby possessed the minimum qualifications required for a sales associate position with Defendant including a GED, more than two years of retail experience, and a flexible schedule.

26. On or about October 23, 2017, Kilby visited Defendant's Adam & Eve store on Gulley Road in Clayton, North Carolina, ("Gulley Road store").

27. While at the Gulley Road store, Kilby told two female employees that the Capital Boulevard store employees told him that Defendant does not hire men for sales floor (sales associate) positions.

28. One of the female employees at the Gulley Road store confirmed to Kilby that it is Defendant's company policy not to hire men for sales floor (sales associate) positions.

29. Within ninety (90) days of the date on which Kilby submitted his application to work at Defendant's Capital Boulevard store, Defendant hired four sales associates at the Capital Boulevard store, all of whom are female.

30. Within sixty (60) days of the date on which Kilby visited Defendant's Gulley Road store, Defendant hired four sales associates at the Gulley Road store, all of whom are female.

31. Defendant received at least 32 applications for sales associate positions from male applicants during the relevant period.

32. None of the male applicants were hired by Defendant.

33. Defendant failed or refused to hire Kilby and other similarly situated male applicants for sales associate positions because of their sex at its retail store locations in North Carolina and South Carolina in violation of Section 703 of Title VII, 42 U.S.C. §§ 2000(e)-2(a).

34. The effect of the practices complained of above has been to deprive Kilby and other similarly situated male applicants of equal employment opportunities and otherwise adversely affect their status as applicants for employment because of their sex.

35. The unlawful employment practices complained of above were intentional.

36. The unlawful employment practices complained of were done with malice or with reckless indifference to the federally protected rights of Kilby and other similarly situated male applicants.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant its officers, agents, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practices which discriminate because of sex.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for men and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make Kilby and all similarly situated male applicants whole by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to hiring or front pay in lieu thereof.

D. Order Defendant to make Kilby and all similarly situated male applicants whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices.

E. Order Defendant to make Kilby and all similarly situated male applicants whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described above, including but not limited to emotional pain, inconvenience, and loss of civil rights in amounts to be determined at trial.

F. Order Defendant to pay punitive damages for its malicious and reckless conduct, as described above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted this the 12th day of September, 2019.

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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